

SUMMARY MINUTES

Fifteenth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation.

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Approved:

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DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY A J MVM DATE 2/19/73
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Participants:
For the United States: Mr. Ainsworth.

For Italy: Mr. Lombardo, President; Messrs. Sorrentino, Bonnetta, De Rossi, De Vera, Di Cristina, Ferrero, Iaschi, Melano and Rosso-Mazzinghi.

Time: 10:00 a.m., Friday, December 12, 1947.

Place: Palazzo Chigi.

Article V

Paragraph 2. Concerning the withdrawal of compensation in foreign exchange after the expropriation of property, the American delegation offered the opinion that, although this matter had been the subject of long discussion, it did not appear that the positions of the two delegations were very different. It appeared in fact that a solution could be found by leaving unchanged the original wording of Paragraph 2, thus recognizing the basic principle that any expropriated person has the unqualified right to withdraw his full compensation in foreign exchange, while inserting a special paragraph in the Additional Protocol which would describe the types of property which might be accorded priority in withdrawal in the event that it were necessary for the Italian Government, owing to a scarcity of foreign exchange, to postpone temporarily the withdrawal of compensation for certain types of property. To this end the American delegation submitted the following proposal as a paragraph in the Additional Protocol:

"Whenever exchange difficulties necessitate that pursuant to Article XXIV, paragraph 1 (f), the Italian Government regulate the withdrawals provided for in Article V, paragraph 2, and in Article VII, paragraph 2, the Italian Government may give priority to applications of nationals,

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corporations and associations of the United States of America to withdraw compensation received on account of property acquired on or before December 8, 1934, or, if subsequently acquired:

"A. In the case of immovable property, if the owner at the time of acquisition had permanent residence outside Italy, or if a corporation or association, had its center of management outside Italy;

"B. In the case of shares of stock, if at the time of acquisition Italian laws and regulations permitted such shares to be traded outside Italy;

"C. In the case of bank deposits, if carried on free account at the time of taking; and

"D. In any case, if the property was acquired through importing foreign exchange, goods or services into Italy, or through reinvestments of profits or accrued interest from such imports whenever made.

"The Italian Government undertakes to grant every facility to assist applicants in establishing their status for the purposes of this paragraph; and to accept evidence of probative value as establishing, in the absence of preponderant evidence to the contrary, a priority claim."

The Italian delegation stated that the proposed paragraph was acceptable; and would be applicable to Article VII, Paragraph 2, as well as to Article V. The Italian negotiators then inquired whether it was intended that the sub-paragraphs "A" through "D" in the new Paragraph were to establish an order of priority as among the types of property listed. The American delegation replied that it was not intended to establish any order of priority as between such withdrawals, but that it was intended to give all properties of the types mentioned, as a group, relative priority over other types of properties not mentioned in the paragraph.

The two delegations then discussed several possible alternatives for the rule, in both Articles V and VII, that the withdrawal of compensation should be effected under the "most favorable terms" applicable to the foreign currency involved. The Italian negotiators stated that, if there were a system of multiple exchange rates, the applicable rate should be one which was not less favorable than an average of all the rates, rather than an average, for instance, of only a certain proportion of the more favorable rates. The Italian delegation considered it preferable, however, to adopt a simple wording which would refer to "the rate applicable to the majority (or major part) of international transactions", or "the prevalent

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rate", or "the rate applicable to transaction of a similar type" (that is, referring to capital transfers). The American delegation stated that it would prefer to find a more specific definition, although it would wish to avoid any formula which might be impractical, and that it would bring the views of the Italian delegation to the attention of the Department of State for further suggestions. In that connection, the American delegation inquired whether it might not be possible to leave the present wording in the paragraph unchanged, and to insert an understanding, perhaps in the Protocol, that the "most favorable terms" for the purpose of these withdrawals would be complied with if the exchange rate granted were the same as that applied to Government transactions. The American delegation observed that, as an example, the United States Government already has an understanding with the Italian Government for the application of the "most favorable rate" to its expenditures in Italy. The Italian delegation acknowledged that such a proposal appeared practicable, since an agreement already existed between the two Governments, and that it would be acceptable. The American delegation stated that it would request the views of its Government on this proposal.

Article XV

Paragraph 2. The American delegation reported that the United States Government would wish to retain the provisions of this paragraph concerning certain customs exemptions for goods in transit at the time that new or higher duties were applied, despite the fact that a similar provision had been eliminated from the proposed charter for an International Trade Organization.

Paragraph 4. In response to the earlier request of the Italian delegation that sympathetic consideration be given to the request of the Italian Government for information concerning the tolerances permitted for imported foodstuffs under the regulations of the Food and Drug Administration in the United States, the American delegation stated that it had received from the Department of State a lengthy communication on this subject and that the technical information contained therein would be transmitted by the American Embassy to the Ministry of Foreign Affairs. As of interest in these negotiations, the American delegation said, the treatment accorded to imported foodstuffs under the regulations of the Food and Drug Administration differs in no way from that accorded to food products produced in the United States, so that Italian manufacturers and exporters receive national treatment in this respect in the United States.

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Article XXI

Artículo XVII

1. Cada Parte se compromete: (a) a que las empresas de propiedad del Gobierno, o bajo su dominio, y los monopolios organismos que gocen de privilegios exclusivos o especiales en sus territorios, hagan sus compraventas, cuando éstas impliquen importaciones o exportaciones que afecten el comercio de la otra Parte, con un criterio estrictamente comercial, teniendo en cuenta precios, calidades, disponibilidades, mercados, transportes y las demás circunstancias que deban tenerse en cuenta en las compra-ventas; y (b) a que los nacionales y compañías y el comercio de dicha otra Parte gocen de oportunidades adecuadas, de conformidad con la costumbre mercantil, para competir en tales compraventas.

2. Cada Parte otorgará a los nacionales, a las compañías y al comercio de la otra Parte tratamiento justo y equitativo, semejante al -- que se otorgue a los nacionales, compañías y al comercio de cualquier -- tercer país, respecto a: (a) la compra de elementos por el Gobierno; - (b) el otorgamiento de concesiones gubernamentales y la celebración de contratos con el Gobierno; y (c) la venta de todo servicio por el Go-- bierno o por todo monopolio u organismo que goce de privilegios exclusivos o especiales.

3. Ninguna de las Partes impondrá medidas de índole discriminatoria que dificulten o impidan a los importadores o exportadores de productos de cualquiera de los dos países obtener seguro marítimo sobre -- dichos productos en compañías de cualquiera de las dos Partes.

Artículo XVIII

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1. Ambas Partes reconocen que las prácticas comerciales que restringen la competencia, limitan el acceso a los mercados o fomentan el monopolio, podrían tener efectos perjudiciales con respecto al comercio entre sus respectivos territorios, ya sea que tales prácticas se lleven a cabo por una o varias empresas mercantiles públicas o privadas, o mediante una combinación, convenio o cualesquiera otros arreglos entre diversas empresas públicas y privadas. Por consiguiente, cada Parte conviene en celebrar consultas con la otra, a solicitud de ésta con respecto a tales prácticas y en tomar las medidas que considere pertinentes para hacer desaparecer los efectos perjudiciales antes mencionados.

2. Ninguna empresa de cualquiera de las Partes, inclusive corporaciones, asociaciones y dependencias y organismos del Gobierno, que sea de propiedad o de dominio público, si se dedica a actividades comerciales, industriales, transportes u otras operaciones mercantiles dentro del territorio de la otra Parte, podrá reclamar o gozar, sea para sí o para sus bienes, de inmunidad, en ese territorio, en cuanto a tributos, acciones judiciales, ejecución de sentencias y otras obligaciones a las cuales estén sujetas, en ese territorio, las empresas que posean y dominen personas particulares.

1. Entre los territorios de las dos Partes habrá libertad de comercio y navegación.

2. Las naves de bandera de una u otra de las Partes que lleven los documentos que requieran sus leyes como prueba de nacionalidad, se tendrán por naves de esa Parte, tanto en alta mar como en los puertos, lugares y aguas de la otra Parte.

3. Las naves de una u otra de las Partes gozarán de libertad, en las mismas condiciones que las naves de la otra Parte, y en las mismas condiciones que las naves de un tercer país cualquiera, para arribar con sus cargamentos a todos los puertos, lugares y aguas de esa otra Parte abiertos a la navegación y al comercio extranjeros. A tales naves y cargamentos se les otorgará en todo caso, el tratamiento nacional y de la nación más favorecida en los puertos, lugares y aguas de la otra Parte; pero cada Parte puede reservar derechos y privilegios exclusivos a sus propias naves respecto al comercio de cabotaje, navegación interior y pesquerías nacionales, o puede admitir naves extranjeras en ellos solamente en base de reciprocidad.

4. A las naves de cada una de las Partes se les otorgará el tratamiento nacional y de la nación más favorecida por la otra con respecto al derecho de transportar todos los productos que se puedan conducir por barco hasta los territorios de esa otra Parte o desde ellos; y a tales productos se les otorgará tratamiento no menos favorable que el que se otorgue a productos semejantes que se transporten en naves de esa otra Parte respecto a:

- (a) derechos y gravámenes de toda clase,
- (b) administración de aduanas y
- (c) primas, reintegros y otros privilegios de esta naturaleza.

5. A las naves de una u otra de las Partes que se encuentren en peligro se les permitirá llegar de arribada forzosa al puerto o fondéadero más cercano de la otra Parte y recibirán tratamiento amistoso y ayuda.

6. El término

The American delegation proposed that the national treatment rules in this paragraph be extended to include most favored nation treatment. As amended according to the proposal, the paragraph would read as follows (newly added words are underlined):

"1. It shall be permissible, in the vessels of either High Contracting Party, to import into the territories of the other High Contracting Party, or to export therefrom, all articles which it is or may hereafter be permissible to import into such territories, or to export therefrom, in the vessels of such other High Contracting Party or of any third country; and such articles shall not be subject to any higher duties or charges whatever than those to which the articles would be subject if they were imported or exported in vessels of the other High Contracting Party or of any third country.

"2. Bounties, drawbacks and other privileges of this nature of whatever kind or denomination which are or may hereafter be allowed, in the territories of either High Contracting Party, on articles imported or exported on national vessels or vessels of any third country shall also and in like manner be allowed on articles imported or exported in vessels of the other High Contracting Party."

In studying this proposal, the Italian negotiators said that they favored the principle of most favored nation treatment in connection with the points covered in this article but that the first insertion of the words, "or of any third country", in the middle of paragraph 1, appeared to be superfluous. They said that they could not foresee any actual case in which the vessels of some third country would be permitted to carry certain articles in export to or import from Italy, for instance, which Italian vessels were not themselves permitted to carry. The American delegation admitted that this would appear to be rare in actual practice, but suggested as a possible case in point that, under the shipping provisions of the recent Italo-Argentine Commercial Agreement, the Italian Government might be constrained to permit one-half of all the goods moved between the two countries to be carried only in Argentine vessels. This might be considered as the equivalent of a provision to the effect that certain articles could only be carried in the vessels of a certain third country, to the exclusion of all other vessels (including Italian ships), thus contravening the most favored nation principle.

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The Italian delegation observed that this example might be a case in point, although the Argentine agreement specified only that tonnage should "preferably" be divided equally between the vessels of the two countries and that it need not be divided at all if any higher cost or delay in shipment were to result. Since there appeared to be some basis for including the first of the three amendments proposed by the American delegation, however, the Italian negotiators said that they would accept the amendments in their entirety as proposed.

Article XXII

Paragraph 2. With respect to the request of the Italian delegation for the elimination of the provision for most favored nation treatment in connection with coasting trade and inland navigation, the American delegation stated that the United States Government was prepared to meet the Italian request, eliminating the second paragraph. The Italian negotiators called attention to the possibility that, if the entire paragraph were eliminated, it might be argued that Paragraph 1 accorded most favored nation treatment concerning coastal and inland navigation, and it was therefore suggested that only the last half of paragraph 2, beginning with the words "provided, however...", be dropped. The American delegation said that the purpose was to meet the request of the Italian Government, and that it remained only to find the proper wording. If the suggestion of the Italian delegation were carried out, for instance, it might be preferable to change the wording of the remaining portion (first half) of paragraph 2 to make it quite clear that most favored nation treatment as well as national treatment in these matters would be excluded. The American delegation stated that it would like to obtain the opinion of its Government on the matter.

Article XXIII

With respect to the inquiry of the Italian delegation regarding the obligations implied under the rules of this article, particularly with regard to military personnel not in uniform or not wearing other indication of their military character, the American delegation stated that this article does not in its view require either High Contracting Party to permit the transit of military personnel when such transit would be in conflict with its neutrality obligations under international law.

Article XXIV

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Article XXIV

Paragraph 1 (b). The American delegation said that although it had agreed to substantial alteration of the phrase "national treasures" in this sub-paragraph, eliminating the word "treasures" in favor of "national works of art" and "national antiquities", it would prefer to retain the word "national" as used in the most recent proposed text. If the latter word were also to be eliminated, nothing would remain of the phrase as used in the Geneva Convention of 1927 and in the proposed Charter of the International Trade Organization. It appeared preferable, the American delegation said, to retain some basis for reasonable limitation in this field. After some discussion, the Italian delegation proposed that the text of the exception be altered in the following sense:

"(b) relating to the exportation of objects the value of which derives primarily from their character as works of art or as antiquities of national interest or from their relationship to national history, and which are not in general practice considered articles of commerce."

The American delegation stated that it would study this proposal and return to the matter at the next meeting.

Paragraph 1 (d). The American delegation proposed and the Italian delegation accepted the following amendment to this sub-paragraph (new words are underlined):

"(d) relating to the production of and traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment."

Paragraph 1 (F). The American delegation stated that, in order to avoid any possible misconception, it desired to clarify in the minutes that in the following phrase, "provided that either High Contracting Party may, nevertheless, regulate capital transfers to the extent necessary to insure...(etcetera)", the words "to the extent necessary" are understood by the American delegation as being subject to a liberal interpretation, in the sense that the "extent necessary" means for only such period of time as may be necessary as well as with only such limitations on the amounts of withdrawals as may from time to time be necessary.

The Italian delegation stated that it accepted this interpretation.

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Paragraph 3

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Paragraph 2 (d). The Italian delegation stated that, after sufficient study, it did not appear that there were any privileges granted to the Holy See under the Lateran Agreements of 1929 which were not excepted from application of the most favored nation clause by the reference, in this sub-paragraph, to the State of the Vatican City.

Paragraph 3 (d). The American delegation requested that the words "the Trust Territory of the Pacific" in this sub-paragraph be corrected to read, "the Trust Territory of the Pacific Islands". This change was accepted.

Paragraph 3 (e). The American delegation referred to the request of the Italian delegation for the inclusion in the Treaty, as an exception, of the following proposed paragraph:

"(E) Advantages which may be granted by either of the High Contracting Parties to territories in which, on the basis of an international agreement, such party may have a particular interest."

The American delegation stated that it felt that any reference to the Italian colonies, express or implied, might give rise to an erroneous impression that the Governments of Italy and the United States had reached an understanding concerning the policy of the United States with respect to the disposition of the Italian colonies and to their eventual regime. Such an impression, the American delegation said, might cast an unfavorable reflection on the impartiality of the United States concerning this matter, and might also be disadvantageous to Italian aspirations concerning the colonies. The particular proposal of the Italian delegation, furthermore, appeared to imply an approval of the principle of spheres of influence, and it was for that reason also undesirable.

The American delegation then stated that, if the Italian delegation felt that it must, nevertheless, expressly reserve its position on this matter, the following proposed paragraph might be examined as a substitute for that suggested by the Italian delegation:

"(E) Advantages which conform with the criteria and procedures established by the United Nations International Trade Organization constituted as an agency of the United Nations and of which the two High Contracting Parties are both members."

The Italian negotiators advanced the proposal that the paragraph suggested by the American delegation be

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studied jointly with that suggested earlier in an effort to find a wording which would refer specifically to territories or areas in which one Party might have a particular interest.

As an alternative, the American delegation then suggested the following sub-paragraph:

"(E) Advantages which, pursuant to decision made by the United Nations or an organ thereof or by an appropriate specialized agency in relationship with the United Nations, may hereafter be accorded by either High Contracting Party to areas other than those enumerated in sub-paragraph (D) of the present paragraph."

In the event this paragraph were found acceptable, the American delegation stated, it would wish to record in the Minutes that the United States Government does not prejudice its position concerning the granting of preferences, either in the International Trade Organization or elsewhere.

The Italian delegation stated that the second proposal of the American delegation was acceptable and that it acknowledged that the United States Government did not thereby in any way prejudice its position with respect to the granting of preferences.

Article XXV

With respect to the territories to which the provisions of the Treaty apply, the American delegation stated that it wished to have it recorded in the Minutes, if the Italian delegation were in agreement, that it is understood that Article XXV does not refer to areas which are under the authority of either High Contracting Party by virtue merely of temporary military occupation.

The Italian delegation stated that it was in agreement with this understanding.

ADDITIONAL PROTOCOL

Paragraph 1(a), (c) and (d); and Paragraph 4.
With respect to the final clause of Paragraph 4, which reads as follows:

"...and either High Contracting Party shall have the right to invite the International Monetary Fund to participate in such consultation, with reference to restrictions to which sub-paragraphs (a), (c) and (d) of Paragraph 1 relate."

the American delegation stated that it wished to record in the Minutes that this clause; as well as the sub-paragraphs (a), (c) and (d) referred to, would be appropriate subjects

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for consultation and for the possible conclusion of new arrangements under the provisions of Article XXIV, Paragraph 1 (F) -- that is, in the event that the International Monetary Fund should cease to function or if either Party should cease to function or if either Party should cease to be a member of the Fund. The Italian delegation accepted this clarification in the record as being in response to the inquiry which it raised during the meeting on October 19 (see Minutes, Article XXIV).

PROTOCOL AND ADDITIONAL PROTOCOL

The American delegation suggested, and the Italian delegation approved, the insertion of the phrase "both equally authentic" in the final clauses of both the Protocol and the Additional Protocol.

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INCOMING TELEGRAM

DEPARTMENT OF STATE—DIVISION OF COMMUNICATIONS AND RECORDS

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FROM: Rome

TO: Secretary of State

NO: 4025, December 13, 6 p.m.

URGENT

Commercial Treaty No. 23

At meeting December 12 delegations came to agreement on all matters except following which are still pending:

Article XVI and add prot paragraph three. Exception for domestic controls over imported supplies still under study by Italian delegation. Favorable reply expected soon.

Article V paragraph two and Article VII paragraph two. Although proposal DEPTTEL 2542, December 5 for priority withdrawal formula accepted (amended only to make it applicable as well to Article VII paragraph two) second proposal as to most favorable rate is still pending. We discussed matter informally at some length seeking common ground (see EMBTEL 3980, December 10). Reaction of Italians to proposals along lines suggested by Dept was that (A) any average of multiple rates should be average of rates applicable to all transactions, but (B) Some simpler wording referring to "rate applicable to majority (or major part) of transactions" or "prevalent rate" or "rate applicable to transactions of a similar type" would be preferred. We pointed out possible shortcomings of such general statements as well as fact that less favorable rate might result from averaging all rates.

Finally we suggested

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Finally we suggested following solution emphasizing that it had not been cleared with Dept: leave present wording unchanged but insert in protocol and understanding that "most favorable terms" for this purpose shall be same as those accorded to US Govt expenditures. As Dept aware we have understanding under which US Govt receives "most favorable rate" (even though undefined). Italians said such a solution would be acceptable. Further thought suggests to us that reference to rate applicable to expenditures or transactions of either HCP rather than reference only to those of US Govt might be preferable. Please instruct.

Article XXIV paragraph one. National treasures. Italians still desire eliminate word "national" before "works of art" and "antiquities" adhering to this view even if clarification were made in minutes that national not interpreted as limiting exception to locally produced objects. Italians suggest and would prefer the following:

"From their character as works of art or antiquities of national interest or from their relationship to national history et cetera". Does Dept approve?

Article XXII paragraph two. Although Italians had suggested complete elimination paragraph two to which we agreed they pointed out that deletion should apply only to last half of paragraph beginning with words "provided however". Otherwise they said MFN treatment coast trade would doubtless be accorded under paragraph one. We agreed subject Dept's approval. It appears that to meet Italian view properly the words "and most-favored-nation" should probably be inserted after "national" in first half paragraph 2; while still deleting second half. Please instruct.

On cultural exchange of notes, Italians stated that they also might have some suggestions.

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INCOMING TELEGRAM

DEPARTMENT OF STATE—DIVISION OF COMMUNICATIONS AND RECORDS

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Rec'd December 15, 1947
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FROM: Rome

TO : Secretary of State

NO : 4041, December 15, 6 p.m.

Commercial treaty 24.



Agreements reached between two delegations 15th meeting December 12 on following points:

Article XXIII. Understanding on transit military personnel (DEPTEL 2368) approved for minutes.

Article XXIV. Paragraph 1-E. Clarification "extent necessary" approved for minutes (DEPTEL 2316). Note that this should refer to subparagraph 1-F.

Article XXIV paragraph 3-D. Italians agreed that exception for Vatican City appears to cover all advantages accorded through Lateran Pacts, hence matter dropped.

Article V paragraph 2 and Article VII paragraph 2. In response to question, we stated that order in which subparagraphs "A" through "D" are listed in the new paragraph (priority withdrawal formula) approved for add protocol is not intended to establish relative priority as between such withdrawals, but only to give all such withdrawals priority over others not listed. Minutes will so state.

Article XXIV paragraph 3-E. When we suggested first of alternatives proposed DEPTEL 2153, October 23 on colonial preferences, Lombardo desired to merge this

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with version originally proposed by Italians (EMBTEL 3756, November 20) in order include specific reference to "territories". We therefore suggested and Italians accepted second alternative, place record US views on preferences in minutes.

Article XV paragraph 2. Italians accepted our desire retain benefits for goods en route.

Article XXI. Italians accepted inclusion MFN treatment (DEPTEL 2351). They urged that first of three insertions (middle paragraph 1) be deleted as serving no purpose, and asked whether we could cite any case when such insertion would be needed. We suggested Italo-Argentine agreement as possible case in point. Although we did not intend bring up subject, this clears air for later discussions with Foreign Office referring to FCN provisions.

Italians also agreed to add "both equally authentic" as suggested; to add "islands" in Article XXIV paragraph 3-D, to add "production of" arms in paragraph 1-D (note that this subparagraph is no longer "C"); and to include statements in minutes regarding territorial scope (Article XXV) and for consultation, etc., regarding Article XXIV paragraph 1-F (note that this is no longer subparagraph "E") in terms of add protocol paragraph 1 (DEPTEL 2399, November 19).

We informed Italians gist Department's A-549, December 2 on food tolerances, stating we would give detailed information to Foreign Office.

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